

Quality Interior Systems, Inc. and United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City and Vicinity, AFL-CIO. Case 17-CA-16350

February 9, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

Upon a charge and an amended charge filed by United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City and Vicinity, AFL-CIO, the Union, on September 28 and November 5, 1992, respectively, the General Counsel of the National Labor Relations Board issued a complaint on November 9, 1992, alleging that the Respondent had violated Section 8(a)(1) and (5) of the Act by failing to make contractually required payments to the health and welfare fund, pension fund, and industry advancement and educational fund. Thereafter, on April 22, 1993, the Regional Director approved an all-party informal settlement agreement of the case. However, on July 20, 1993, the Regional Director issued an order revoking approval of, vacating and setting aside the informal settlement, and reissuing the complaint on the ground that the Respondent had refused to comply with the settlement.

On August 19, 1993, the Respondent filed an answer to the complaint. However, by letter dated November 5, 1993, the Respondent withdrew its August 19, 1993 answer, as well as an answer it had previously filed on January 13, 1993.

On December 3, 1993, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On December 7, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Here, the undisputed allegations indicate that although the Respondent initially filed answers to the complaint, it subsequently withdrew those answers. Such a withdrawal has the same effect as the failure to file an answer, i.e., the allega-

tions are considered to be admitted.¹ Accordingly, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation with an office and place of business in Lee's Summit, Missouri, has been a contractor in the construction industry engaged in acoustical ceiling installation. During the 12-month period ending October 31, 1992, the Respondent, in conducting its business operations purchased and received at its Lee's Summit, Missouri facility goods valued in excess of \$50,000 directly from points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the Builders' Association of Missouri (the Association) has been an organization composed of various employers engaged in the construction industry, one purpose of which is to represent its employer-members and other employers who stipulate to be bound to collective-bargaining agreements negotiated by the Association in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union.

About August 20, 1990, the Association and the Union entered into a collective-bargaining agreement (the Association Agreement), effective from August 20, 1990, through March 31, 1993.

About August 15, 1991, the Respondent entered into a contract stipulation agreement with the Union which at all material times bound the Respondent to the terms and conditions of employment of the Association Agreement.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by Respondent who perform work which has historically and traditionally been performed heretofore by members of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (to include work previously performed by Lathers) in the geographical area which extends to and includes the counties: Jackson, Clay, Platte, Lafayette, Ray, Carroll, Saline, Bates, Johnson, Cass, Harrison, Mercer, Grundy,

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

Daviess, Caldwell, Livingston, Henry, St. Clair, Hickory, Camden, Laclede and Vernon in Missouri, and Wyandotte, Johnson, Miami, Linn and Leavenworth in Kansas.

About August 15, 1991, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit by entering into the Association Agreement with the Union for the period August 15, 1991, to March 31, 1993, without regard to whether the majority status of the Union has ever been established under the provision of Section 9 of the Act.

For the period of August 15, 1991, to March 31, 1993, based on Section 9(a) of the Act, the Union has been and is the limited exclusive collective-bargaining representative of the unit.

Since about May 1, 1992, the Respondent has failed to continue in effect all the terms and conditions of the Association Agreement by failing to make payments to the health and welfare fund, pension fund, and industry advancement and educational fund for its employees in the unit.

Although the terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining, the Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 8(d) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since May 1, 1992, to honor the terms and conditions of the 1990–1993 Association Agreement with the Union by failing to make required contributions to various benefit funds, we shall order the Respondent to honor the terms of the Agreement, and to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set

forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).²

ORDER

The National Labor Relations Board orders that the Respondent, Quality Interior Systems, Inc., Lee's Summit, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to honor the terms and conditions of the 1990–1993 Association Agreement with United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City and Vicinity, AFL–CIO by failing to make required contributions to various benefit funds on behalf of employees in the following unit:

All employees employed by Respondent who perform work which has historically and traditionally been performed heretofore by members of the United Brotherhood of Carpenters and Joiners of America, AFL–CIO (to include work previously performed by Lathers) in the geographical area which extends to and includes the counties: Jackson, Clay, Platte, Lafayette, Ray, Carroll, Saline, Bates, Johnson, Cass, Harrison, Mercer, Grundy, Daviess, Caldwell, Livingston, Henry, St. Clair, Hickory, Camden, Laclede and Vernon in Missouri, and Wyandotte, Johnson, Miami, Linn and Leavenworth in Kansas.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms and conditions of the 1990–1993 Association Agreement with the Union by making all required contributions to the various benefit funds on behalf of unit employees, and make the unit employees whole for its failure to do so since May 1, 1992, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other

²The record does not indicate whether the industry advancement and educational fund is an industry promotion fund and therefore a permissive subject of bargaining for which no remedy is warranted. *Finger Lakes Plumbing & Heating Co.*, 254 NLRB 1399 (1981), and cases cited there. We leave resolution of that issue to the compliance stage.

records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Lee's Summit, Missouri, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail to honor the terms and conditions of the 1990–1993 Association Agreement with United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City and Vicinity, AFL–CIO by failing to make the required contributions to various benefit funds on behalf of employees in the unit described below:

All employees employed by us who perform work which has historically and traditionally been performed heretofore by members of the United Brotherhood of Carpenters and Joiners of America, AFL–CIO (to include work previously performed by Lathers) in the geographical area which extends to and includes the counties: Jackson, Clay Platte, Lafayette, Ray, Carroll, Saline, Bates, Johnson, Cass, Harrison, Mercer, Grundy, Daviess, Caldwell, Livingston, Henry, St. Clair, Hickory, Camden, Laclede and Vernon in Missouri, and Wyandotte, Johnson, Miami, Linn and Leavenworth in Kansas.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms and conditions of the 1990–1993 Association Agreement with the Union by making all required contributions to the various benefit funds, and WE WILL make whole unit employees for our failure to do so since May 1, 1992.

QUALITY INTERIOR SYSTEMS, INC.